Rule 49. Unauthorized Practice of Law [sections (d) and (e) omitted for present purposes]

(a) **General Rule**

No person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar, except as otherwise permitted by these Rules.

(b) **Definitions**

The following definitions apply to the interpretation and application of this rule:

(1) **"Person"** means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual company, joint stock company, trust, trustee, receiver, legal or business entity.

(2) **"Practice of Law"** means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(A) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, will, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(B) Preparing or expressing legal opinions;

(C) Appearing or acting as an attorney in any tribunal;

(D) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;

(E) Providing advice or counsel as to how any of the activities described in subparagraph (A) through (D) might be done, or whether they were done, in accordance with applicable law;

(F) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

(3) **"In the District of Columbia"** means conduct in, or conduct from an office or location within, the District of Columbia.

(4) **"Hold out as authorized or competent to practice law in the District of Columbia"** means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia. Among the characterizations which give such an indication are "Esq.," "lawyer," "attorney at law," "counselor at law," "contract lawyer," "trial or legal advocate," "legal representative," "legal advocate," and "judge."

(5) **"Committee"** means the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, as constituted under this rule.

(c) **Exceptions**

The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

(1) **United States Government Employee:** Providing authorized legal services to the United States as an employee thereof;

(2) **United States Government Practitioner:** Providing legal services to members of the public solely before a special court, department or agency of the United States, where:

(A) Such legal services are confined to representation before such fora and other conduct reasonably ancillary to such representation;

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice; and

(C) If the practitioner has an office in the District of Columbia, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(3) **Practice Before a Court of the United States:** Providing legal services in or reasonably related to a pending or potential proceeding in any court of the United States if the person has been or reasonably expects to be admitted to practice in that court, provided that if the practitioner has an office in the District of Columbia, the practitioner expressly gives prominent notice in all business

documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(4) **District of Columbia Employee:** Providing legal services for his or her employer during the first 360 days of employment as a lawyer by the government of the District of Columbia, where the person is an enrolled Bar member in good standing of a state or territory, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and has been authorized by her or his government agency to provide such services;

(5) **District of Columbia Practitioner:** Providing legal services to members of the public solely before a department or agency of the District of Columbia government, where:

> (A) Such representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to such proceedings;
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> (B) Such representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it;
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> (C) If the practitioner has an office in the District of Columbia, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c); and
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> (D) If the practitioner does not have an office in the District of Columbia, the practitioner expressly gives written notice to clients and other parties with respect to any proceeding before tribunals of that department or agency and any conduct reasonably ancillary to such proceedings of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(6) **Internal Counsel:** Providing legal advice only to one's regular employer, where the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the District of Columbia;

(7) ***Pro Hac Vice* In the Courts of the District of Columbia:** Providing legal services in or reasonably related to a pending or potential proceeding in a court of the District of Columbia, if the person has been or reasonably expects to be admitted *pro hac vice*, provided:

> (i) **Limitation to 5 Applications Per Year.** No person may apply for admission *pro hac vice* in

more than five (5) cases pending in the courts of the District of Columbia per calendar year, except for exceptional cause shown to the court.

(ii) **Applicant Declaration.** Each application for admission *pro hac vice* shall be accompanied by a declaration under penalty of perjury: (1) certifying that the applicant has not applied for admission *pro hac vice* in more than five cases in courts of the District of Columbia in this calendar year, (2) identifying all jurisdictions and courts where the applicant is a member of the bar in good standing, (3) certifying that there are no disciplinary complaints pending against the applicant for violation of the rules of any jurisdiction or court, or describing all pending complaints, (4) certifying that the applicant has not been suspended or disbarred for disciplinary reasons or resigned with charges pending in any jurisdiction or court, or describing the circumstances of all suspensions, disbarments, or resignations, (5) certifying that the person has not had an application for admission to the D.C. Bar denied, or describing the circumstances of all such denials; (6) agreeing promptly to notify the Court if, during the course of the proceeding, the person is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court; (7) identifying by name, address, and D.C. Bar number the D.C. Bar member with whom the applicant is associated under Super. Ct. Civ. R. 101, (8) certifying that the applicant does not practice or hold out to practice law in the District of Columbia or that the applicant qualifies under an identified exception in Rule 49(c), (9) certifying that the applicant has read the rules of the relevant division of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and has complied fully with District of Columbia Court of Appeals Rule 49 and, as applicable, Super. Ct. Civ. R. 101, (10) explaining the reasons for the application, (11) acknowledging the power and jurisdiction of the courts of the District of Columbia over the applicant's professional conduct in or related to the proceeding, and (12) agreeing to be bound by the

District of Columbia Court of Appeals Rules of Professional Conduct in the matter, if the applicant is admitted *pro hac vice*.

(iii) **Office Outside of D.C.** No person who maintains or operates from an office or location for the practice of law within the District of Columbia may be admitted to practice before a court of the District of Columbia *pro hac vice*, unless that person qualifies under another express exception provided in section (c) hereof.

(iv) **Supervision.** Any person admitted *pro hac vice* must comply with Super. Ct. Civ. R. 101 and other applicable rules of the District of Columbia courts.

(v) **Application Fee.** Application to participate *pro hac vice* shall be accompanied by a fee of $100.00 to be paid to the Clerk of Court. Proof of payment of the fee shall accompany the application for admission *pro hac vice*. The application fee shall be waived for a person whose conduct is covered by section (c)(9) hereof, or whose client's application to proceed *in forma pauperis* has been granted.

(vi) **Filing.** The applicant first shall submit a copy of the application to the office of the Committee, pay the application fee, and there receive a receipt for payment of the fee; whereupon the applicant shall file the application with the receipt in the appropriate office of the Clerk of Court. Only certified checks, cashiers checks, or money orders will be accepted in payment of the fee, made payable to "Clerk, D.C. Court of Appeals." The application will not be accepted for filing without the required receipt.

(vii) **Power of the Court.** The court to which the relevant litigation matter is assigned may grant or deny applications, and withdraw admissions to participate *pro hac vice* in its discretion.

(8) **Limited Duration Supervision By D.C. Bar Member:** Practicing law from a principal office located in the District of Columbia, while an active member in good standing of the highest court of a state or territory, and while not disbarred or suspended for disciplinary reasons or after resignation with charges pending in any jurisdiction or court, under the direct supervision of an enrolled, active member of the District of Columbia Bar, for one period not to exceed 360 days from the commencement of such practice, during pendency of a person's first application for admission to the District of Columbia Bar; *provided* that the practitioner has submitted the application for admission within ninety (90) days of commencing practice in the District of Columbia, that the District of Columbia Bar member takes responsibility for the quality of the work and complaints concerning the services, that the practitioner or the District of Columbia Bar member gives notice to the public of the member's supervision and the practitioner's bar status, and that the practitioner is admitted *pro hac vice* to the extent he or she provides legal services in the courts of the District of Columbia.

(9) **Pro Bono Legal Services:** Providing legal services *pro bono publico* in the following circumstances:

> (A) Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee and who is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.
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> (B) Where the person is a member in good standing of the highest court of any state, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non–profit organization.

(C) Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall give notice of his or her bar status, and shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.

An attorney may practice under Part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.

(10) **Specifically Authorized Court Programs:** Providing legal services to members of the public as part of a special program for representation or assistance that has been expressly authorized by the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, provided that the person gives notice of his or her bar status and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

(11) **Limited Practice for Corporations:** Appearing in defense of a corporation or partnership in a small claims action, or in settlement of a landlord-tenant matter, through an authorized officer, director, or employee of the organization; provided:

(A) the organization must be represented by an attorney if it files a cross-claim or counterclaim, or if the matter is certified to the Civil Action Branch; and

(B) the person so appearing shall file at the time of appearance an affidavit vesting in the person the requisite authority to bind the organization.

(12) **Practice in ADR Proceedings:** Providing legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution ("ADR") proceeding, provided:

(i) The person is authorized to practice law by the highest court of a state or territory or by a foreign country, and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

(ii) The person may begin to provide such services in no more than five (5) ADR proceedings in the District of Columbia per calendar year.

(iii) The person does not maintain or operate from an office or location for the practice of law within the District of Columbia or otherwise practice or hold out to practice law in the District of Columbia, unless that person qualifies under another express exception provided in section (c) hereof.

(13) **Incidental and Temporary Practice:** Providing legal services in the District of Columbia on an incidental and temporary basis, provided that the person is authorized to practice law by the highest court of a state or territory or by a foreign country (and a lawyer admitted only in a foreign country must be engaged in the practice of law in that country), and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

NEW OR REVISED COMMENTARY

Commentary to § 49(b)(3):

Section (b)(3) clarifies by explicit definition the geographic extent of the Rule.

The Rule is intended to regulate all practice of law within the boundaries of the District of Columbia. The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia.

The practice of law subject to this Rule is not confined to the matters subject to the law of the District of Columbia. The Rule applies to the practice of all substantive areas of the law and requires admission to the District of Columbia Bar where the practice is carried on in the District of Columbia and does not fall within one of the exceptions enumerated in section (c).

A lawyer is engaged in the practice of law in the District of Columbia when the lawyer provides legal advice from an office or location within the District. That is true if the lawyer practices in a residence or in a commercial building, if all of the lawyer's clients are located in other jurisdictions, if the lawyer provides legal advice only by telephone, letter, email, or other means, if the lawyer provides legal advice only concerning the laws of jurisdictions other than the District of Columbia, or if the lawyer informs the client that the lawyer is not authorized to practice law in the District of Columbia and does not provide advice about District of Columbia law. A lawyer in the District of Columbia who advises clients or otherwise provides legal services in another jurisdiction may be subject to the rules of that jurisdiction concerning unauthorized practice of law.

Rule 49 applies only if a lawyer is physically present in the District of Columbia at least once during the course of a matter. Even if a matter involves a client, and a dispute or transaction, in the District, the Rule does not apply if a lawyer located outside the District advises a client in-person only when the client visits the lawyer in the lawyer's office, or if the lawyer advises the client only by telephone, regular mail, or electronic mail. However, if a lawyer is physically present in the District even once during the course of a matter, the lawyer may be engaged in the District of Columbia in the practice of law with respect to the entire matter, even if the lawyer otherwise operates only from a location outside the District.

The definition of "in the District of Columbia" is intended to cover the practice of law within the District under the supervision of, or in association with, a member of the District of Columbia Bar. Persons who provide legal services as lawyers with law firms and other legal organizations in the District of Columbia, with or without bar memberships elsewhere, are practicing law in the District and are in violation of the Rule, unless they fall within one of the express exceptions set forth in section (c).

Commentary to § 49(b)(4):

As a regulation with a purpose to protect the public, the rule requires that representation of non-Bar members must avoid giving the impression to persons not learned in the law that a person is a qualified legal professional subject to the high ethical standards and discipline of the District of Columbia Bar.

The listing of terms, which normally indicate one is holding oneself out as authorized or qualified to practice law, is not intended to be exhaustive. The definition of "hold out" is intended to cover any conduct which gives the impression that one is qualified or authorized to practice. *See In Re: Banks*, 561 A.2d 158 (D.C. 1987).

A person or a law firm may hold out that person as authorized or competent to practice law in the District of Columbia by describing that person as a "contract lawyer." *See* Opinion 16-05 of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. In general, Rule 49 applies to contract lawyers to the same extent that it applies to other lawyers.

Where a member of the public correctly understands that a person is not admitted to the District of Columbia Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the District of Columbia. *See Banks v. D.C. Dept. of Consumer and Regulatory Affairs*, 634 A.2d 433 (D.C. 1993).

Commentary to § 49(c)(3)

Practice before the courts of the United States is a matter committed to the jurisdiction and discretion of those entities. If a practitioner has an office in the District of Columbia and is admitted to practice before a federal court in the District of Columbia but is not an active member of the D.C. Bar, the practitioner may use the D.C. office to engage in the practice of law before that federal court, but only if the practitioner provides clear notice in all business documents that the practitioner is not a member of the D.C. Bar and that the practice is limited to matters before that federal court (or to other matters within the scope of other exceptions in section (c)). This exception applies only if a person's entire practice falls within section (c); if any part of the person's practice is not covered by an exception, Rule 49 requires a practitioner with an office in the District of Columbia to be an active member of the D.C. Bar. The rules of federal courts in the District of Columbia may or may not authorize admission on a regular or *pro hac vice* basis of an attorney with an office in the District of Columbia if the attorney is not a member of the D.C. Bar.

Commentary to § 49(c)(12):

Section (c)(12) is new. This exception allows lawyers to represent clients in up to five new ADR proceedings annually. This provision furthers the strong public policy favoring the efficient and expeditious resolution of disputes outside the judicial process, to the extent

consistent with the broader public interest. This provision gives clients who agree to resolve their disputes through ADR proceedings an option to retain attorneys not admitted in the District of Columbia that is generally equivalent to the option provided through the *pro hac vice* exception in section (c)(7) to clients who resolve their disputes in judicial proceedings.

This new exception (c)(12) contains three important provisos, each of which is based on provisos for the *pro hac vice* exception in section (c)(7). First, the lawyer must be authorized to practice law by the highest court of a state or territory or by a foreign country, and must not be disbarred or suspended for disciplinary reasons, or have resigned with charges pending, in any jurisdiction or court. Second, the lawyer may begin to provide such services in no more than five ADR proceedings in the District of Columbia in each calendar year. An ADR proceeding would not count as a new ADR proceeding for purposes of this limit if it is ancillary to a judicial proceeding in which a lawyer is admitted pro hac vice (for example, when the court orders or encourages the parties to try to resolve the matter through ADR). Similarly, this limit of five new ADR proceedings annually would not apply so long as the lawyer's participation in an ADR proceeding in the District of Columbia is temporary and incidental to his or her practice in another jurisdiction. Third, the lawyer may not maintain a base of operations in the District or Columbia or otherwise practice here, unless the lawyer qualifies under another exception in Rule 49(c).

This provision allows lawyers to represent clients in ADR proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by this exception, a lawyer may represent parties in ADR proceedings (or other matters) under section (c)(13) if the lawyer's presence in the District is incidental and temporary.

This exception relates only to lawyers who represent clients in ADR proceedings. As explained in the Commentary to Rule 49(b)(2), lawyers who serve as arbitrators, mediators, or other kinds of neutrals in ADR proceedings are not engaged in the practice of law.

Commentary to § 49(c)(13):

Section (c)(13) is new. Rule 49 is not intended to require admission to the District of Columbia Bar where an attorney with a principal office outside the District of Columbia is incidentally and temporarily required to come into the city to provide legal services to a client.

The exception requires that the lawyer's presence in the District be both incidental and temporary. Whether the lawyer's presence in the District is "incidental" to the District of Columbia and to the lawyer's authorized practice in another jurisdiction depends on a variety of factors. For example, there is no intent to prohibit a lawyer based outside the District from taking a deposition in an action pending in another forum, or closing a transaction relating to another jurisdiction, at a location in the District of Columbia, where the person performing the legal services is duly authorized to practice law in another jurisdiction and the person does not suggest to any client or other persons involved in the matter that the lawyer is licensed in the District.

Where, however, an attorney provides legal services concerning a transaction related to the District from a location within the District of Columbia, the attorney may be engaged in the practice of law in the District of Columbia because the attorney's presence is not incidental. Whether a transaction is related to the District of Columbia depends on the location of the parties, the location of the property and interests at issue, and the law to be applied. Another relevant factor is whether the lawyer not admitted to the D.C. Bar is the only lawyer for a party, or whether the lawyer is co-counsel or the lawyer's role is limited to one aspect of a transaction with respect to which a D.C. Bar member is lead counsel. For example, where a transaction concerns real estate located in the District of Columbia, a lawyer based outside the District who comes to the city to provide legal services to a client located inside or outside the District relating only to the federal tax aspects of the transaction may qualify for this exception. However, a lawyer based outside the District who comes to the city to be primary counsel to a District-based client with respect to all aspects of the real estate transaction may not qualify for this exception. Whether the lawyer who is not admitted to the D.C. Bar and whose principal office is outside the District is associated with or supervised by a member of the D.C. Bar is a relevant, but not controlling, factor in determining whether the lawyer's practice in the District is "incidental."

Section (c)(13) also requires that the lawyer's presence in the District be "temporary." There is no absolute limit on the number or length of a lawyer's visits to the District that makes the lawyer's presence "temporary." For example, a lawyer who spends several weeks or even months in the District in connection with a case that does not involve the District and that is pending in a court outside the District may be only temporarily, and incidentally, in the District for purposes of section (c)(13). If a lawyer's principal place of business is in the District, the lawyer is not practicing law in the District on a temporary basis and must be a member of the D.C. Bar unless another exception in section (c) applies.

This exception permits a person authorized to practice law in another country to practice law in the District on an incidental and temporary basis, subject to the specified conditions. Those conditions, including the requirements that a foreign lawyer be authorized to practice law in a foreign country and not be disbarred or suspended in any jurisdiction, and that the lawyer be engaged in the practice of law in the foreign country, are consistent with the requirements in Rule 46(c)(4) concerning special legal consultants that the foreign lawyer be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where he or she is authorized to practice law, and that the lawyer be engaged in the practice of law in that country.

The exception in section (c)(13) is separate from other exceptions in Rule 49(c), and the specific exception controls the general exception. For example, whether or not regular appearances before federal agencies located in the District of Columbia by attorneys with their principal offices in other jurisdictions fit within this exception for temporary practice, they may qualify under the federal practice exception in section (c)(2). A lawyer with a principal office outside the District who comes to the District in connection with a pending or potential case in the District of Columbia courts must qualify for the *pro hac vice* exception in section (c)(7) regardless of whether the lawyer's practice in the District is otherwise temporary and incidental.

A lawyer whose principal office is outside the District of Columbia and who provides pro bono services in the District of Columbia on an incidental and temporary basis under Rule 49(c)(13) is not required to comply with the application, supervision, and notice requirements of the exception in Rule 49(c)(9)(B) for provision of pro bono services. The (c)(9)(B) exception facilitates the provision of pro bono services by lawyers whose principal office is in the District of Columbia and who qualify for another exception to Rule 49, such as the exception in Rule 49(c)(2) for certain U.S. government practitioners. Consistent with its purpose to encourage the provision of pro bono services, the exception in Rule 49(c)(9) does not impose additional obligations on lawyers who are permitted under another exception to provide pro bono services in the District of Columbia. In particular, unlike lawyers who are authorized to provide pro bono services only under the (c)(9) exception, lawyers who provide pro bono services under the (c)(13) exception are not required to apply for admission to the D.C. Bar, to be supervised by a D.C. Bar member, or to provide notice of their bar status. Clients who obtain services on a pro bono basis from lawyers practicing under the (c)(13) exception are protected to the same extent as clients who pay lawyers a fee to provide services under the (c)(13) exception.